

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

- against -

STEVEN BYERS, JOSEPH SHERESHEVSKY,  
WEXTRUST CAPITAL, LLC, WEXTRUST  
EQUITY PARTNERS, LLC, WEXTRUST  
DEVELOPMENT GROUP, LLC, WEXTRUST  
SECURITIES, LLC, and AXELA  
HOSPITALITY,  
LLC,

Defendants,

- and -

ELKA SHERESHEVSKY,

Relief Defendant.

08 Civ. 7104 (DC)

ECF Case

**DECLARATION OF VINCENT P. SCHMELTZ III**

STATE OF ILLINOIS        )  
                                      ) ss.:  
COUNTY OF COOK        )

Vincent P. Schmeltz III, being duly sworn, deposes and says:

**A. General Background**

1. I, Vincent P. Schmeltz III, am a counsel at Dewey & LeBoeuf LLP.
2. I represent Timothy J. Coleman in his capacity as the Receiver for WexTrust Capital, LLC; WexTrust Equity Partners, LLC; Wexford Development, LLC

(a/k/a WexTrust Development Group, LLC); WexTrust Securities, LLC; and Axela Hospitality, LLC (collectively, the “WexTrust Entities”).

3. On behalf of the Receiver, I have been closely involved in investigating the Commodity Funds operated by WexTrust Capital through its affiliate, WexTrade Commodity Managers, LLC. I have personal knowledge of the facts and circumstances discussed in this Declaration.

4. The Commodity Funds consist of four funds: the WexTrade Principal Protected Fund I, LLC, WexTrade Diversified Futures Fund I, LLC, WexTrade Principal Offshore Fund I, Ltd., and WexTrade Diversified Offshore Futures Fund I, Ltd.

5. On behalf of the Receiver, my colleagues and I have worked with banking institutions and clearing firms to freeze all of the bank accounts related to the Commodity Funds.

6. Avidus, a clearing firm for the Commodity Funds, is still holding approximately \$33,000 that we have not frozen or recovered. The Receiver is taking steps to recover these funds, as well.

7. Throughout the course of the Receivership, my colleagues and I have worked with the NFA to: (1) ascertain the state of the Commodity Funds; (2) determine the extent, if any, the Commodity Funds were involved in the Ponzi scheme; and (3) to locate and secure all of the offering proceeds.

8. The National Futures Association came to WexTrust’s Chicago Office on August 12, 2008, to begin a nearly two-month audit of the Commodity Funds.

9. On August 13, 2008, an attorney from the Commodity Futures Trading Commission's Division of Enforcement ("Division of Enforcement") contacted me to discuss the receivership and the civil complaint against Messrs. Byers and Shereshevsky.

10. Since then, my colleagues and I have been in regular contact with the Division of Enforcement and the NFA and have provided them with all of the documents and information they have requested.

11. During the course of our work with the NFA, the NFA informed us that the escrow accounts related to the Wextrade Diversified Futures Fund I had been wrongfully invaded. The NFA's audit established that approximately \$1.8 million had been transferred out of the escrow account for this Fund prior to trading and returned at a later time.

12. During the course of our representation of the Receiver, I have worked with Deloitte Financial Advisory Services LLP ("Deloitte FAS") to ascertain the amount and extent of commingling in the Commodity Funds and throughout the WexTrust investments. Deloitte FAS has confirmed extensive commingling of non-commodity investor funds within the Commodity Funds, over and above the \$1.8 million identified by the NFA.

13. In early November 2008, my colleague Tim Carey and I had a conversation with lawyers from the Division of Enforcement. We informed the Division of Enforcement of the nature and extent of commingling within the Commodity Funds. We also informed the Division of Enforcement that, based on what we had discovered in our investigation, we intended to advise the Receiver that the Commodity Funds investors should be treated like all other WexTrust investors. And, we informed the

Division of Enforcement that we expected to pay expenses of the Receivership out of the  
Commodity Funds.

I declare under penalty of perjury that the foregoing is true.

Executed on December 19, 2008

/s/ Vincent P. Schmeltz III  
Vincent P. Schmeltz